

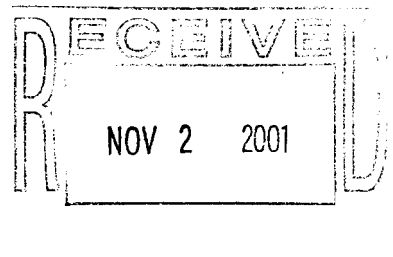


A project of Earth Island Institute

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November 2, 2001

Ms. I. Teiko Saito  
Chief, Office of Management Authority  
U.S. Fish and Wildlife Service  
Mail Stop 700  
4401 North Fairfax Drive  
Arlington, VA 22203



*Ann* Terbush  
Chief, Permits Division  
National Marine Fisheries Service  
Room 13102  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Comments on Proposed Permit Regulations

Dear Ms. Saito and Ms. Terbush:

These comments are submitted by the Sea Otter Defense Initiative ("SODI") on the regulations proposed by the National Marine Fisheries Service ("NMFS") to amend the permit requirements under the Marine Mammal Protection Act ("MMPA"). These are important regulations that will define the circumstances under which marine mammals can be exported from the United States for public display purposes and that will address other aspects of how marine mammals in captivity are protected under the MMPA.

SODI is writing to both agencies because the species with which we are primarily concerned, sea otters, falls under the jurisdiction of the U.S. Fish and Wildlife Service ("FWS"). However, both agencies are responsible for implementing the MMPA, and we are concerned that FWS has taken no action to develop regulations to address the issues presented by the proposed NMFS requirements. SODI therefore urges both agencies to work together in developing regulations that can be jointly administered. FWS should take immediate action to promulgate its own regulations, and NMFS must be sure to coordinate its development of final regulations with FWS. We are concerned that these regulations have been developed by NMFS without apparent coordination with FWS, and believe that it is time for both agencies to work together to address these important issues.

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SODI joins in the detailed comments on the NMFS regulations submitted by our umbrella organization, the Earth Island Institute ("EII"). As explained in those comments, both FWS and NMFS have been far too lenient in their regulation of the public display industry and the manner in which marine mammals held in captivity are supervised and cared for. It is essential that both agencies not fall subject to the demands of the public display industry that the MMPA provides no jurisdiction over animals after they are removed from the wild. As explained in the EII comments, this clearly is not the case, and a stronger presence by NMFS and FWS is clearly necessary to ensure that marine mammals in captivity are fully protected.

SODI agrees with NMFS that the MMPA prohibits the issuance of public display permits to foreign facilities for purposes of taking marine mammals in U.S. waters. This is currently an issue of concern to SODI as a result of a proposed permit for Japanese aquaria which seek to capture and remove Alaskan sea otters for export to Japan. FWS needs to affirm this principle.

In addition, SODI generally supports the concept of requiring letters of comity from foreign nations before marine mammals can be exported for any purpose. Letters of comity have the potential advantage of bringing foreign nations into conformance with U.S. marine mammal protection initiatives. In addition, they provide a reasonably effective way to ensure that standards based on U.S. principles are enforced once animals are exported. However, the NMFS definition of what constitutes comity is not strong enough. Any facility that engages in practices which would be unacceptable under U.S. law or policy must be considered to not be engaging in actions comparable to those that would be required under U.S. law. As a result, no transfer exports should be authorized for such a facility. For example, in the sea otter permit application situation, the aquaria involved do not measure up under U.S. standards. In addition, at least one of the facilities has actively participated in the horrendous drive fisheries for purposes of capturing dolphins for public display. These practices are uniformly condemned by the U.S. and other countries. There is no basis upon which any entity engaged in such a practice ought to be considered in conformance with U.S. standards and allowed to receive marine mammals from the U.S. Finally, NMFS/FWS need to develop a basis for inspecting foreign facilities in advance of export of any marine mammals. Any such inspections should be paid for by the facilities involved.

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Thank you for considering these comments. **If** you have any questions about SODI's concern over the marine mammal permit program as it relates to sea otters, please contact me.

Sincerely,

Cindy <sup>U</sup>Lowry  
Director

cc: Barbara Kohn, D.V.M.  
Robert H. Mattlin, Ph.D.